

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONNA M. HILL,)	
)	
Plaintiff.)	
)	Civil No. 13-1604
v.)	Judge Nora Barry Fischer
)	
JAMES BARNACLE, et al,)	
)	
)	
Defendants.)	

MEMORANDUM ORDER

On February 19, 2014, United States Magistrate Judge Robert C. Mitchell filed an Amended Report and Recommendation, recommending that the complaint filed by Plaintiff, Donna M. Hill, be dismissed for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(ii). Plaintiff was given until March 5, 2014 to file objections. On March 4, 2014, she filed a motion for extension of time, which was granted, giving her until April 5, 2014 to file objections.

On March 18, 2014, Plaintiff filed objections. In the objections, Plaintiff contends that her complaint should not be dismissed on the grounds that she already presented the claim of retaliatory suspension of her visitation privileges to the Pennsylvania Commonwealth Court, because she is now submitting facts and evidence not introduced to that court. Specifically, she states that she began her letter writing campaign complaining about her husband's inadequate mental health care at the prison on November 5, 2011, before her visitation privileges were suspended. However, such facts and evidence were entirely within Plaintiff's possession and control and it was her own decision not to present them to the Commonwealth Court.

The Court of Appeals for the Third Circuit has stated that:

The principle of res judicata bars claims that were brought, or could have been brought, in a previous action. In re Mullarkey, 536 F.3d 215, 225 (3d Cir. 2008). It applies where there is "(1) a final judgment on the merits in a prior suit

involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action.” Id. Although res judicata is an affirmative defense for a defendant to plead, Fed.R.Civ.P. 8(c), dismissal for failure to state a claim may be appropriate when it is obvious, either from the face of the pleading or from other court records, that an affirmative defense such as res judicata will necessarily defeat the claim. See Jones v. Bock, 549 U.S. 199, 215, 127 S.Ct. 910, 166 L.Ed.2d 798 (2007).

Taylor v. Visinsky, 534 F. App’x 110, 112 (3d Cir. 2013).

Plaintiff presented her claim of retaliatory suspension of her visitation privileges against essentially the same parties (the Pennsylvania Department of Corrections) to the Pennsylvania Commonwealth Court and the case was dismissed on preliminary objections. She filed an appeal and the Pennsylvania Supreme Court affirmed the Commonwealth Court’s decision. It is therefore obvious from the face of the complaint and court records that she is attempting to relitigate the same claim in this Court.

AND NOW, this 19th day of March, 2014,

IT IS ORDERED that the complaint is DISMISSED for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(ii). The Magistrate Judge’s Amended Report and Recommendation (ECF No. [11]) is adopted as the opinion of this Court, as supplemented herein.

IT IS FURTHER ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, if any party wishes to appeal from this Order a notice of appeal, as provided in Fed. R. App. P. 3, must be filed with the Clerk of Court, United States District Court, at 700 Grant Street, Room 3110, Pittsburgh, PA 15219, within thirty (30) days.

s/Nora Barry Fischer
United States District Judge

cc/ecf: Honorable Robert C. Mitchell
United States Magistrate Judge

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(regular and certified mail)